

By: Senator(s) Kirby

To: Insurance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2181

1 AN ACT TO AMEND SECTIONS 71-3-3 AND 71-3-5, MISSISSIPPI CODE  
2 OF 1972, TO PROVIDE THAT CERTAIN OWNER/OPERATORS OF MOTOR VEHICLES  
3 ARE INDEPENDENT CONTRACTORS AND ARE EXEMPT FROM THE PROVISIONS OF  
4 THE WORKERS' COMPENSATION LAW; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 71-3-3, Mississippi Code of 1972, is  
7 amended as follows:

8 71-3-3. Unless the context otherwise requires, the  
9 definitions which follow govern the construction and meaning of  
10 the terms used in this chapter:

11 (a) "Person" includes an individual, firm, voluntary  
12 association or a corporation.

13 (b) "Injury" means accidental injury or accidental  
14 death arising out of and in the course of employment without  
15 regard to fault which results from an untoward event or events, if  
16 contributed to or aggravated or accelerated by the employment in a  
17 significant manner. Untoward event includes events causing  
18 unexpected results. An untoward event or events shall not be  
19 presumed to have arisen out of and in the course of employment,  
20 except in the case of an employee found dead in the course of  
21 employment. This definition includes injuries to artificial  
22 members, and also includes an injury caused by the willful act of  
23 a third person directed against an employee because of his  
24 employment while so employed and working on the job, and  
25 disability or death due to exposure to ionizing radiation from any  
26 process in employment involving the use of or direct contact with  
27 radium or radioactive substances with the use of or direct  
28 exposure to roentgen (X-rays) or ionizing radiation. In radiation

29 cases only, the date of disablement shall be treated as the date  
30 of the accident. Occupational diseases, or the aggravation  
31 thereof, are excluded from the term "injury," provided that,  
32 except as otherwise specified, all provisions of this chapter  
33 apply equally to occupational diseases as well as injury.

34 (c) "Death," when mentioned as a basis for the right to  
35 compensation, means only death resulting from such an injury.

36 (d) (i) "Employee" means any person, including a minor  
37 whether lawfully or unlawfully employed, in the service of an  
38 employer under any contract of hire or apprenticeship, written or  
39 oral, express or implied, provided that there shall be excluded  
40 therefrom all independent contractors and especially any  
41 individual performing service in, and at the time of, the sale of  
42 newspapers or magazines to ultimate consumers under an arrangement  
43 under which the newspapers or magazines are to be sold by the  
44 individual at a fixed price, the individual's compensation being  
45 based on the retention of the excess of such price over the amount  
46 at which the newspapers or magazines are charged to the  
47 individual, whether or not the individual is guaranteed a minimum  
48 amount of compensation for such service or is entitled to be  
49 credited with the unsold newspapers or magazines returned. A  
50 student of an educational institution who, as a part of such  
51 educational institution's curriculum, is receiving practical  
52 training at any facility, who is under the active and direct  
53 supervision of the personnel of the facility and/or an instructor  
54 of the educational institution, and who is not receiving wages as  
55 a consequence of participation in such practical training shall  
56 not be considered an employee of such facility on account of  
57 participation in such practical training.

58 (ii) "Employee" shall not include any  
59 owner/operator who leases his vehicular equipment with a driver to  
60 a motor carrier under a written contract. Such owner/operator and  
61 his driver are independent contractors exempt from the provisions

62 of this chapter. This subparagraph (ii) shall apply only to motor  
63 carriers regulated by the U.S. Department of Transportation  
64 pursuant to 49 CFR Part 376.

65 (e) "Employer," except when otherwise expressly stated,  
66 includes a person, partnership, association, corporation and the  
67 legal representatives of a deceased employer, or the receiver or  
68 trustee of a person, partnership, association or corporation.

69 (f) "Carrier" means any person authorized in accordance  
70 with the provisions of this chapter to insure under this chapter  
71 and includes self-insurers.

72 (g) "Self-insurer" is an employer who has been  
73 authorized under the provisions of this chapter to carry his own  
74 liability on his covered employees without insuring in a stock or  
75 mutual carrier.

76 (h) "Commission" means the Workers' Compensation  
77 Commission.

78 (i) "Disability" means incapacity because of injury to  
79 earn the wages which the employee was receiving at the time of  
80 injury in the same or other employment, which incapacity and the  
81 extent thereof must be supported by medical findings.

82 (j) "Compensation" means the money allowance payable to  
83 an injured worker or his dependents as provided in this chapter,  
84 and includes funeral benefits provided therein.

85 (k) "Wages" includes the money rate at which the  
86 service rendered is recompensed under the contract of hiring in  
87 force at the time of injury, and also the reasonable value of  
88 board, rent, housing, lodging or similar advantage received from  
89 the employer and gratuities received in the course of employment  
90 from others than the employer. The term "wages" shall not include  
91 practical training received by students of an educational  
92 institution as a part of such educational institution's  
93 curriculum.

94           (1) "Child" shall include a posthumous child, a child  
95 legally adopted prior to the injury of the employee, a child in  
96 relation to whom the deceased employee stood in the place of a  
97 parent for at least one (1) year prior to the time of injury and a  
98 stepchild or acknowledged illegitimate child dependent upon the  
99 deceased, but does not include married children unless wholly  
100 dependent on him. "Grandchild" means a child as above defined of  
101 a child as above defined. "Brother" and "sister" include  
102 stepbrothers and stepsisters, half brothers and half sisters, and  
103 brothers and sisters by adoption, but does not include married  
104 brothers nor married sisters unless wholly dependent on the  
105 employee. "Child," "grandchild," "brother" and "sister" include  
106 only persons who are under eighteen (18) years of age, and also  
107 persons who, though eighteen (18) years of age or over, are wholly  
108 dependent upon the deceased employee and incapable of self-support  
109 by reason of mental or physical disability, and also a child  
110 eighteen (18) years of age or older, until his twenty-third  
111 birthday, who is dependent upon the deceased and is pursuing a  
112 full-time education.

113           (m) "Parent" includes stepparents and parents by  
114 adoption, parents-in-law or any person who for more than three (3)  
115 years prior to the death of the deceased employee stood in the  
116 place of a parent to him, or her, if dependent on the injured  
117 employee.

118           (n) The term "surviving spouse" includes the decedent's  
119 legal wife or husband, living with him or her or dependent for  
120 support upon him or her at the time of death or living apart for  
121 justifiable cause or by reason of desertion at such time,  
122 provided, however, such separation had not existed for more than  
123 three (3) years without an award for separate maintenance or  
124 alimony or the filing of a suit for separate maintenance or  
125 alimony in the proper court in this state. The term "surviving  
126 spouse" shall likewise include one not a legal wife or husband but

127 who had entered into a ceremonial marriage with the decedent at  
128 least one (1) year prior to death and who, on the date of the  
129 decedent's death, stood in the relationship of a wife or husband,  
130 provided there was no living legal spouse who had protected her or  
131 his rights for support by affirmative action as hereinabove  
132 required. The term "surviving spouse" as contemplated in this  
133 chapter shall not apply to any person who has, since his or her  
134 separation from decedent, entered into a ceremonial marriage or  
135 lived in open adultery with another.

136 (o) The term "adoption" or "adopted" means legal  
137 adoption prior to the time of the injury.

138 (p) The singular includes the plural and the masculine  
139 includes the feminine and neuter.

140 (q) It is expressly provided, agreed and understood in  
141 determining beneficiaries under this section that a surviving  
142 spouse suffering a mental or physical handicap and children under  
143 the age of eighteen (18) years are presumed to be dependent.

144 (r) "Independent contractor" means any individual, firm  
145 or corporation who contracts to do a piece of work according to  
146 his own methods without being subject to the control of his  
147 employer except as to the results of the work, and who has the  
148 right to employ and direct the outcome of the workers independent  
149 of the employer and free from any superior authority in the  
150 employer to say how the specified work shall be done or what the  
151 laborers shall do as the work progresses, one who undertakes to  
152 produce a given result without being in any way controlled as to  
153 the methods by which he attains the result.

154 (s) "Average weekly wage for the state" means an amount  
155 determined by the commission as of October 1 of each year based  
156 upon wage and employment statistics reported to the commission by  
157 the Mississippi Employment Security Commission. Such amount shall  
158 be based upon data for the preceding twelve-month period and shall  
159 be effective from and after January 1 of the following year.

160           **SECTION 2.** Section 71-3-5, Mississippi Code of 1972, is  
161 amended as follows:

162           71-3-5. The following shall constitute employers subject to  
163 the provisions of this chapter:

164           Every person, firm and private corporation, including any  
165 public service corporation but excluding, however, all nonprofit  
166 charitable, fraternal, cultural, or religious corporations or  
167 associations, that have in service five (5) or more workmen or  
168 operatives regularly in the same business or in or about the same  
169 establishment under any contract of hire, express or implied.

170           Any state agency, state institution, state department, or  
171 subdivision thereof, including counties, municipalities and school  
172 districts, or the singular thereof, not heretofore included under  
173 the Workers' Compensation Law, may elect, by proper action of its  
174 officers or department head, to come within its provisions and, in  
175 such case, shall notify the commission of such action by filing  
176 notice of compensation insurance with the commission. Payment for  
177 compensation insurance policies so taken may be made from any  
178 appropriation or funds available to such agency, department or  
179 subdivision thereof, or from the general fund of any county or  
180 municipality.

181           From and after July 1, 1990, all offices, departments,  
182 agencies, bureaus, commissions, boards, institutions, hospitals,  
183 colleges, universities, airport authorities or other  
184 instrumentalities of the "state" as such term is defined in  
185 Section 11-46-1, Mississippi Code of 1972, shall come under the  
186 provisions of the Workers' Compensation Law. Payment for  
187 compensation insurance policies so taken may be made from any  
188 appropriation or funds available to such office, department,  
189 agency, bureau, commission, board, institution, hospital, college,  
190 university, airport authority or other instrumentality of the  
191 state.

192           From and after October 1, 1990, counties and municipalities  
193 shall come under the provisions of the Workers' Compensation Law.  
194 Payment for compensation insurance policies so taken may be made  
195 from any funds available to such counties and municipalities.

196           From and after October 1, 1993, all "political subdivisions,"  
197 as such term is defined in Section 11-46-1, Mississippi Code of  
198 1972, except counties and municipalities shall come under the  
199 provisions of the Workers' Compensation Law. Payment for  
200 compensation insurance policies so taken may be made from any  
201 funds available to such political subdivisions.

202           From and after July 1, 1988, the "state" as such term is  
203 defined in Section 11-46-1, Mississippi Code of 1972, may elect to  
204 become a self-insurer under the provisions elsewhere set out by  
205 law, by notifying the commission of its intent to become a  
206 self-insurer. The cost of being such a self-insurer, as provided  
207 otherwise by law, may be paid from funds available to the offices,  
208 departments, agencies, bureaus, commissions, boards, institutions,  
209 hospitals, colleges, universities, airport authorities or other  
210 instrumentalities of the state.

211           The Mississippi Transportation Commission, the Department of  
212 Public Safety and the Mississippi Industries for the Blind may  
213 elect to become self-insurers under the provisions elsewhere set  
214 out by law by notifying the commission of their intention of  
215 becoming such a self-insurer. The cost of being such a  
216 self-insurer, as provided elsewhere by law, may be paid from funds  
217 available to the Mississippi Transportation Commission, the  
218 Department of Public Safety or the Mississippi Industries for the  
219 Blind.

220           The Mississippi State Senate and the Mississippi House of  
221 Representatives may elect to become self-insurers under provisions  
222 elsewhere set out by law by notifying the commission of their  
223 intention of becoming such self-insurers. The cost of being such  
224 self-insurers, as provided elsewhere by law, may be paid from

225 funds available to the Mississippi State Senate and the  
226 Mississippi House of Representatives. The Mississippi State  
227 Senate and the Mississippi House of Representatives are authorized  
228 and empowered to provide workers' compensation benefits for  
229 employees after January 1, 1970.

230 Any municipality of the State of Mississippi having forty  
231 thousand (40,000) population or more desiring to do so may elect  
232 to become a self-insurer under provisions elsewhere set out by law  
233 by notifying the commission of its intention of becoming such an  
234 insurer. The cost of being such a self-insurer, as provided  
235 elsewhere by law, may be provided from any funds available to such  
236 municipality.

237 The commission may, under such rules and regulations as it  
238 prescribes, permit two (2) or more "political subdivisions," as  
239 such term is defined in Section 11-46-1, Mississippi Code of 1972,  
240 to pool their liabilities to participate in a group workers'  
241 compensation self-insurance program. The governing authorities of  
242 any political subdivision may authorize the organization and  
243 operation of, or the participation in such a group self-insurance  
244 program with other political subdivisions, provided such program  
245 is approved by the commission. The cost of participating in a  
246 group self-insurance program may be provided from any funds  
247 available to a political subdivision.

248 Domestic servants, farmers and farm labor are not included  
249 under the provisions of this chapter, but this exemption does not  
250 apply to the processing of agricultural products when carried on  
251 commercially. Any purchaser of timber products shall not be  
252 liable for workers' compensation for any person who harvests and  
253 delivers timber to such purchaser if such purchaser is not liable  
254 for unemployment tax on the person harvesting and delivering the  
255 timber as provided by United States Code Annotated, Title 26,  
256 Section 3306, as amended. Provided, however, nothing in this  
257 section shall be construed to exempt an employer who would

258 otherwise be covered under Section 71-3-5 from providing workers'  
259 compensation coverage on those employees for whom he is liable for  
260 unemployment tax.

261       Employers exempted by this section may assume, with respect  
262 to any employee or classification of employees, the liability for  
263 compensation imposed upon employers by this chapter with respect  
264 to employees within the coverage of this chapter. The purchase  
265 and acceptance by such employer of valid workers' compensation  
266 insurance applicable to such employee or classification of  
267 employees shall constitute, as to such employer, an assumption by  
268 him of such liability under this chapter without any further act  
269 on his part notwithstanding any other provisions of this chapter,  
270 but only with respect to such employee or such classification of  
271 employees as are within the coverage of the state fund. Such  
272 assumption of liability shall take effect and continue from the  
273 effective date of such workers' compensation insurance and as long  
274 only as such coverage shall remain in force, in which case the  
275 employer shall be subject with respect to such employee or  
276 classification of employees to no other liability than the  
277 compensation as provided for in this chapter.

278       An owner/operator exempted from the provisions of this  
279 chapter pursuant to Section 71-3-3(d)(ii) may assume, with respect  
280 to his employees or drivers, to provide coverage under a workers'  
281 compensation insurance policy or an authorized occupational policy  
282 that insures the owner/operator or his drivers. However, the  
283 failure of the owner/operator to secure such coverage shall not  
284 create any liability on the motor carrier under the provisions of  
285 this chapter.

286       This chapter shall not apply to transportation and maritime  
287 employments for which a rule of liability is provided by the laws  
288 of the United States.

289       This chapter shall not be applicable to a mere direct  
290 buyer-seller or vendor-vendee relationship where there is no

291 employer-employee relationship as defined by Section 71-3-3, and  
292 any insurance carrier is hereby prohibited from charging a premium  
293 for any person who is a seller or vendor rather than an employee.

294 Any employer may elect, by proper and written action of its  
295 own governing authority, to be exempt from the provisions of the  
296 Workers' Compensation Law as to its sole proprietor, its partner  
297 in a partnership or to its employee who is the owner of fifteen  
298 percent (15%) or more of its stock in a corporation, if such sole  
299 proprietor, partner or employee also voluntarily agrees thereto in  
300 writing. Any sole proprietor, partner or employee owning fifteen  
301 percent (15%) or more of the stock of his/her corporate employer  
302 who becomes exempt from coverage under the Workers' Compensation  
303 Law shall be excluded from the total number of workers or  
304 operatives toward reaching the mandatory coverage threshold level  
305 of five (5).

306 **SECTION 3.** This act shall take effect and be in force from  
307 and after its passage.